

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

OA No. 638/2019

Date of decision: 22.09.2020.

Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).

Ganesh Dashrath Thakare,
Age: 54 years, Holding the post of
Senior Divisional Accounts Officer,
Central Mumbai-Public Works, Worli, Mumbai.
Residing at Flat No. 2205,
Butter Cup Building, Pokharan Road No.2,
Thane(West)- 400 610. ... **Applicant.**
(By Advocate Shri Uday Warunjikar).

Versus

1. The Comptroller and Auditor General of India,
Pocket 9, Deen Dayal Upadhyaya Marg,
New Delhi- 110 124.
2. The Accountant General (A&E-I),
Pratishtha Bhavan, 101, M.K. Road,
Marine Lines, Mumbai- 400 020.
3. The Accountant General (A&E-II),
Maharashtra, Nagpur,
Civil Lines, Nagpur- 440 001.
4. State of Maharashtra,
Through Secretary, Public Works Department,
Mantralaya, Mumbai- 400 032.
5. Executive Engineer,
Central Mumbai, Public Works Division,
Ganpatrao Jadhav Marg,
Worli, Mumbai- 400 018. ... **Respondents.**

By Advocate Shri V B Joshi for Respondent Nos. 1-3 and Shri V S Masurkar for Respondent Nos. 4 & 5.).

Reserved on : 13.08.2020

Pronounced on: 22.09.2020

ORDER

Per: R. Vijaykumar, Member (A)

This OA has been filed on 16.09.2019 seeking urgent hearing and claiming the following relief:

"a) This Hon'ble Tribunal may be pleased to call for the records and proceedings of the order passed by the Respondent No.2 dated 12.09.2019 along with the order passed by the Respondent No.4 dated 30 August, 2019 and after going through the same and after satisfying the legality, validity and propriety of the same may be pleased to quash and set aside."

2. The facts of the case have been drawn from the files and notings summoned from Respondent Nos. 4 & 5 of the Maharashtra State Government in Public Works Department, the notings and files of the Respondent Nos. 2 & 3, and from pleadings.

3. The applicant was directly appointed as Divisional Accountant in the year 1993 and has been promoted thrice to the rank of Senior Divisional Accountant and has served at nine different offices across the state of Maharashtra outside Mumbai but within Mumbai Administrative Region of the AG's office (hereinafter, Mumbai

region) until 2018 when he was posted at Central Mumbai, PWD division at Worli and joined in November 2018. The transfer and posting of Divisional Accountants including the applicant within Mumbai region is customarily done by the Accountant General (A&E)-I, Mumbai although cadre controlling authority is the Accountant General (A&E)-II, Nagpur for all such staff in the State of Maharashtra and it is the latter who makes available the staff of this category for the Mumbai region who are then posted to State Government offices within this region to attend to their specified duties. It is also explained that such DAOs are customarily shifted between regions within the State of Maharashtra only based on their consent although the general principles of transfer within the State applies to all such staff. The work of the DAOs (DAO, DAO-II, DAO-I, Sr DAO) posted in appropriate offices according to their seniority are supervised departmentally by the concerned Inspecting Officers of the Accountant General (A&E). The DAOs posted at State offices draw their pay and allowances from the State Government by performing their roles of compiling accounts, audit, and as advisers to

assist the concerned office headed, in the PWD, by a Divisional officer of the State Government of appropriate rank, typically an Executive Engineer, in regard to financial transactions and their propriety. The DAO's work is also reviewed by the AG including through his Inspecting Officers, on reference made by the Divisional officers concerned of the State Government; on adverse, unreconciled opinions reported as noted in the specified register by the DAO; and annual audits made of the Department and its divisions. All these serve as inputs to the audit report sent to the Governor of the State to be placed before the Legislature of the State and is customarily reviewed by the Public Accounts Committee of the Legislature. This specific function is accomplished by the Accountants General of the State on behalf of the Comptroller & Auditor General of India in accordance with his duties and responsibilities as laid down under Article 149 of the Constitution read with Entry 76 in the Union List that entrusted Parliament with the power to legislate in regard to the Audit of the Accounts of the Union and of the States and further, read with the Comptroller and Auditor-General's

(Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred as Act of 1971), as amended from time to time. These duties include also the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the State and the Act of 1971 as amended on 01.03.1976. Specifically, Sections 10 and 11 of the Act of 1971, also lay down that in regard to the accounts of the States, the Governor of the State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling (i) the said accounts of the State (either at once or gradually by the issue of several orders); or (ii) the accounts of any particular services or departments of the State." This eventuality has not arisen, however, in the State of Maharashtra, and no claims are asserted in that regard.

4. The applicant, an auditor appointed for this purpose by the Cadre Controlling Authority, the concerned Accountant General, acting on behalf of the C&AG, has contended that he received peremptory orders dated 30.08.2019 of the

Superintending Engineer (SE), Shri NM Pawar, communicated through Respondent No.5, the Executive Engineer (EE), on the same date, directing his immediate relief and posting of a Sr. DAO, then available at the Andheri office to act in his place. The relevant Government instruction of the same date sent to the Superintending Engineer also came into the possession of the Applicant, which he quotes in his complaint letter of the same date addressed to the Respondent No.2 and unaccountably, shown as received on 03.09.2019, under copy to Respondent No.3 at Annexure A-5 colly, which reads as below:

"From,
G.D. Thakare,
Sr. Divisional Accounts Officer,
Central Mumbai (P W) Division,
Worli, Mumbai.
Date: 30/08/2019.

To,
The Accountant General (A&E)-I,
Pratishtha Bhawan, 101, MK Road,
Marine Lines, Mumbai- 20.

Subject:- One sided compulsory relieving of charge of Sr. Divisional Accounts Officer from Central Mumbai (Public Works) Division, Worli, Mumbai by state authorities.

Reference:-1) Govt. Of Mah. Letter No. Misc-2019/case No.229/service-3 dt. 30/08/2019.

2) Letter of SE Mumbai PW Circle No. 6642 dt. 30/08/2019.

3) Letter of Executive Engineer Central Mumbai (Public Works) Division, No. 5733 dt. 30/08/2019.

Respected Sir,

With reference to the above subject it is submitted that I have been given compulsory relieving letter which is in violation of the prerogative of my appointing authority i.e. the Accountant General. Being representative of C.&AG of India, I, hereby deny such type of illegal relieving. This is an arbitrary action and I have never been apprised of any such reasons for this action. Hence I hereby deny all the contents of above relieving letter.

It appears to me that there may be some misrepresentations of facts by some field officers with the intentions of misleading higher authorities in Mantralaya Mumbai.

It further submitted that I work according to the rules and regulations laid down by the Government and due to my vigilant working I have saved loss to exchequer on many occasions. I shall submit details of the same to you personally if allowed.

You are therefore requested to take appropriate measures as deemed fit and please issue suitable instructions or orders to be followed by me.

Thanking you,

Yours faithfully,

sd/-

(G.D. Thakare)

Sr. Divisional Accounts Officer."

5. The Applicant also wrote to the Respondent No.5 on the same date, 30.08.2019 in Annexure A-5 colly referring to his delegation of powers by the C&AG and that his postings are governed only by the AG and while denying any knowledge of complaints, accordingly refused to accept the relieving orders and declared that he was continuing to work in the same position.

6. Following this, the SE, in letter dated 31.08.2019 addressed to the EE, referred to Standing Orders of the AG to entrust the work of the Applicant who is stated to have been relieved,

to one Shri Sopan Kumar, a Sr. DAO attached to the Construction wing at the same location, Worli. The Executive Engineer wrote back to the SE on 05.09.2019 stating that Shri Sopan Kumar insisted on orders of the AG for such allocation and that the Finance Department had advised in a letter of 04.09.2019 that TDS and GST returns must be filed within time to avoid penal interest. The SE referred this issue on 06.09.2019 to Government advising them to take up the matter with the AG, Nagpur. Adopting the Additional Chief Secretary's directions on the face of this reference: "Write to AG, he has been relieved by order of the Government," formal approval was obtained on file. On 09.09.2019, the AG (A&E)-I, Mumbai wrote to the State Government that although the letter of 30.08.2019, sent to him by way of a copy of instructions given to SE, PWD to relieve the Applicant, referred to many complaints as a basis for the peremptory relief of the Applicant, none of them had still been forwarded for the office to consider nor was any detail provided on whether any disciplinary action had been taken against the Applicant and advised the department to forward all such papers to the Respondent No.3 and that he

(AG, Nagpur) was the competent authority to initiate disciplinary action. The Government then wrote (Annexure R-4) on 09.09.2019, in response or coincidentally, of their volition, to AG (A&E)-II, Nagpur under advise to AG (A&E)-I, Mumbai enclosing complaints of 21st August received by the Addl. Chief Secretary from the SE (Shri N M Pawar) on 22.08.2019 and initialled in token of receipt by him; a letter dated 21.08.2019 received directly from a journalist (Shri K Jain) on 23.08.2019 on which the Additional Chief Secretary, who was heading the PWD of the State, had initialled; ACS orders of 29.08.2018 on a complaint of a contractor (Shri Kakad) handed over to him on the same day and on which he had recorded, "Relieve him today. Instructions were given ten days ago"; and a letter given on the same day, 29.08.2019, by the SE (Shri Pawar)-it would appear, in person, which is clearly a copy of his earlier letter dated 22.08.2019 enclosing the same complaints sent earlier on 22.08.2019 on which, the ACS now recorded, "Relieve him today." The State Government (PWD) reported to the AG-II, Nagpur that since several complaints were received against the Applicant, the Government had directed

immediate relief of the Applicant on 30.08.2019 for reason of these complaints and also the letter of SE dated 06.09.2019 on in-charge arrangements, as discussed above. This letter also requested the AG-II, Nagpur under copy to AG-I, Mumbai, not to post him in the Mumbai region in any other division of the Public Works Department.

7. After this exchange, the Respondent No.3 wrote on 11.09.2019 to the State Government that the powers of transfer were vested with the AG and was embodied in the State's Public Works Accounts Code, 1967 and also asked for the complaints received, in original, to consider disciplinary action. Simultaneously, they sent a letter to AG-I, Mumbai asking them to process his posting at their level and stated that no complaints against the Applicant were pending with them. Instead, orders were passed by AG-I, Mumbai on 12.09.2019, directing the Applicant to report before the AG-I, Nagpur for further orders. The AG-I, Mumbai also took a decision on file to direct Shri Sopan Kumar, DAO posted at Worli in another Division, to look after the work of the Applicant until further orders, in accordance with Standing Orders on the subject and in compliance with the request of the

State Government. The letter dated 12.09.2020 also enclosed the letter dated 30.08.2019 of the Applicant protesting his relief and further, attached a status report on complaints received against the Applicant from 2001 to 2015, although at variance with the information available with them on significant aspects, as mentioned in their own file notes and as we find, diluted further in the reply affidavit to show the applicant in a negative light by attempting to show as open, FIRs known by 2015 to have been earlier closed by Court orders. This letter expresses the opinion based on complaint copies received by them on 09.09.2019 and earlier complaints of 2001-2015, that the complaints are serious and that, in the face of the unilateral relief by the State Government and inability to post him anywhere, they were surrendering him to the Cadre Controlling Office of Respondent No.3 at Nagpur. At this stage, for arriving at this opinion, they neither assert nor do their files reveal any semblance of examination of the complaints, consultations with the Inspecting Officers supervising the Applicant's work, the register at office of Respondent No.5, nor did they, at the level of Respondent No.2 or

his Sr. DAG handling Administration, give a personal hearing to or obtain submissions from, the applicant. They again simultaneously requested the State Government to forward the original complaints to the Nagpur office that had advised of non-receipt with the letter of 09.09.2019, since it was alone competent to initiate disciplinary action. A relevant fact is the allegation of the Applicant recorded in his letter dated 18.09.2019, that he had sought an appointment with the AG-I, Mumbai (Respondent No.2) on 30.08.2019 and then visited their offices several times from 03.09.2019 to 12.09.2019 but was denied a hearing by the Respondent No.2 and all his subordinates and that he was available in the office on 12.09.2019, on the day the letter was sent to Respondent No.3, of which he learnt later from his original office and wrote an objection letter of 13.09.2019. The Respondent No.2 in the common reply, has denied receipt of this letter. He does, however affirm that the Applicant only met the AG-II (Respondent No.2) on 30.08.2019 but on the other three or four occasions including 12.09.2019, he is claimed by Respondent No.2 to have come in his capacity as a

Union representative along with two other Union members. To understand this claim however, no petition is produced or nature or discussion is explicated. However, we also note from the files of Respondent No.2 that although this letter of 18.09.2019 was received on 18/19.09.2019 by the Respondent No.2, the file with the letter of 18.09.2019 seen earlier by the Sr. DAG, was itself put up by way of a noting seen by the AG only in mid-October and the notes do not disclose any denial of the allegations of the lack of even a preliminary inquiry with the Applicant by the AG-I, Mumbai before sending the letter dated 12.09.2019. On this letter, Respondent No.2 now instead, directed reference of the detailed explanation to Respondent No.3, the AG-II, Nagpur. No comments are also made on the Applicant's previous disagreement with the SE and this particular contractor documented and annexed with this letter. This had reflected the inquiries made by the Applicant into the complaints and points to the contractor, Shri Kakad, as a possible source of complaint and brings out tender irregularities and allegations of forgery and substitution of tender documents by the SE, Shri N.M. Pawar in

June/July as an immediate source of friction along with other statements in defence. He also argues that he had never asked for transfer to Nagpur, that there are no departmental inquiries pending against him with an earlier inquiry already completed and adverse entries expunged; that there were no administrative exigencies whatsoever, and that the orders of the State Government and of Respondent No.2, couched as an order of surrender, were clearly punitive in nature, made without any application of mind nor after giving him any opportunity.

8. After receipt of the letters and orders of the State Government on 13.09.2019, the AG-II, Nagpur advised AG-I, Mumbai that DAOs had no headquarters in the conventional sense of the term, that transfers of DAOs were made between regions only on request and since the AG-I, Mumbai had no powers to transfer the Applicant to Nagpur, lying outside the assigned Mumbai region, he should adjust him in the Mumbai region to avoid problems of drawal of pay and allowances. In reply, AG-I, Mumbai gave a point-wise reply asserting that the competent authority to take disciplinary action was Respondent No.3 and

reminding him that the Mumbai office had a limited role on deployment of staff within the Mumbai region. Further, they referred to the complaints forwarded by the State Government to Nagpur office in their letter of 09.09.2019 and enclosed a further chronological list of complaints dating from 2001 to 2015 in regions from Thane to Kolhapur and Raigad where, as Respondent Nos. 2 & 3 have later discovered as this matter lingered, the Applicant had been posted and transferred on the basis of baseless, unproven and withdrawn complaints. They, further draw the attention of Respondent No.3 to the detailed explanation of the Applicant. With regard to complaints, they observe that the complaints appear prima facie serious and that they had forwarded earlier complaints now listed in a tabular statement (discussed above), and on which, no status reports had emerged from the office of Respondent No.3. However, as mentioned above, the AG-I, Mumbai did not carry into their letter, the information contained in their own recent notes, that the SP, Palghar had informed as far back as 24.08.2015 that after scrutinising CCTV footage and other evidence, they had submitted a closure report (B Summary) to the

Court, and that based on the Applicant's counter-complaint, they had arrested six persons and were pursuing criminal action. Finally, referring to the peremptory relief of the Applicant and on the Government's demand to not post him in Mumbai region, they describe it as a complex situation which needs serious attention of the cadre controlling authority viz. AG, Nagpur and that, in the face of this refusal, they had no option but to surrender the Applicant and ask him to report at the Nagpur office. Meanwhile, Respondent No.1 had advised Respondent No.3 in letter dated 27.09.2019, to not post the Applicant anywhere as DAO without completing preliminary inquiry, which is not complete even until date of final hearing, as the Court is informed by an unsigned status report deposited without the benefit of counter-signature by the learned counsel for respondents and not corrected or digitally signed copy sent by email, despite being brought to the attention of their learned counsel. Respondent No.1 further directed that until that date, the Applicant may remain as posted at Nagpur but, as clarified later, his pay and allowances should be reflected in the State budget. No interpretation is offered

for this curious recommendation in pleadings or by the learned counsels. Perhaps, we may infer, that this was also an instance of non-application of mind by Respondent No.1 to the unprecedented issue.

9. Again, further to a letter from Respondent No.3 of 13.09.2019, the Respondent No.2 notes in his reply of 16.09.2019 that this is a unique situation with no precedent and that if the State Government has resorted to this step, the core allegations that have been made with documentary evidence, need to be addressed. They once again reiterate the pendency of the FIR against the Applicant in Palghar on which the status was well within their knowledge from 2015 and which inconvenient fact, finds place in the notes put up by the office. They argue that since the Government does not wish him to be posted in the Mumbai region and the same response may come from other Divisions/Departments, the only alternative for them was to direct him to at Nagpur and it is for the Cadre Controlling Authority to decide his posting and regularisation of absence. This submission by Respondent Nos. 1-3 makes no mention of the letters of 11.03.2019 and 18.09.2019 sent

by Respondent No.3 to the State Government, Respondent No.4, which invites the State Government to refer to the violation of the Maharashtra Public Works Accounts Code, 1967, of which they were perhaps not unaware, by the unilateral action of the State in relieving the Applicant and that only the Cadre Controlling Authority had the powers to deploy the DAO; further, that the Mumbai office had the limited power to transfer only within the Mumbai region. In view of the violation of the Code, Respondent No.3 advised the State Government to withdraw the order of relief dated 30.08.2019 and to send a request with supporting details for any transfer that they may desire. It transpires from the State Government files, that a note on this aspect was put up on 30.09.2019, proposing cancellation and draft letters of cancellation and an advisory to their Counsel was also agreed up to the level of Deputy Secretary. However, the note was continued upon receiving some instructions on the same day, without pressing this aspect and instead, an affidavit was got approved at the level of the ACS, leaving this issue that was raised by the Respondent No. 3 without any response. On his

part, Respondent No.2 appeared to have yielded to the demand of the State Government (Respondents 4&5) and not only relieved the Applicant from Mumbai region without even a preliminary inquiry with the Applicant waiting at his doorsteps, that could support reasoned judgement or a preliminary conclusion that could be incorporated in the letter dated 12.09.2019 but also obliged the State Government by extending the benefit of the Standing Orders and allowing another Sr. DAO at Worli suggested by the same SE, to carry on the audit, on the assumption that Applicant had been relieved. Through this, Respondent No.3 merely continued to remind the State Government pressing the violation of the State's Public Works Accounts Code, 1967 and did not get any reply. In this connection, we find from an examination of the files of Respondent No.2 that the notes put up, their letter to Respondent No.2, and the affidavit, obscure and falsify the facts at their command in regard to the status of the FIR filed at Palghar, Thane. They read as reproduced below in tabular form:

Issue in brief	Remarks in Notes of Respdt No.2	Lr sent to Respdt No.1	Vide Affdvt filed
<p>Supdt Engineer, Thane PW Circle, Thane vide letter dated 22.01.2015 has requested for transfer of Shri G.D. Thakare, DAO-I. Supdt Enger has stated vide letter dated 22.01.2015 requested the transfer of Shri Thakare and also stated that Ex. Enger, PWD. Jawhar has reported that they have received the complaint with FIR against Shri Thakare, Sr. DAO from Jawhar police station vide their letter dated 09.01.2015 which is lodged by Smt. Kusum Namdeo Gavit a local lady regarding misbehaviour with her. Accordingly, the Police Department has arrested Shri Thakare under Indian Penal Code, Article 04/2015 Section 354(A) (1) and filed the FIR. In this regard</p>	<p>The matter was persued with Chief Engineer, Mumbai Public Works region, Mumbai and O/o the A.G. Nagpur vide this office D.O. No. WM Cell/GDT/04 dated 06.04.2015 for investigation. This office has called for the investigation report from Superintendent of Police, Palghar vide this office D.O.letter No. WM Cell/GDT/150 dated 29.06.2015 as no report has been received on the action taken on the said FIR by the authorities even after a period of 6 months. Supdt of Police, Palghar has informed vide his letter dated 24.08.2015 that on complaint of Shri G.D. Thakare case No. 16/2015 u/s 353 was registered at Jawhar Police Station. During the course of investigation, CCTV footage were seized from the spot and there is no</p>	<p>Action Taken: The matter was persued with Chief Engineer, Mumbai Public Works region, Mumbai and O/o the A.G. Nagpur vide this office D.O. No. WM Cell/GDT/04 dated 06.04.2015 for investigation . This office has called for the investigation report from Superintendent of Police, Palghar vide this office D.O.letter No. WM Cell/GDT/150 dated 29.06.2015 as no report has been received on the action taken on the said FIR by the authorities even after a period of 6 months. Supdt of Police, Palghar has informed vide his letter dated 24.08.2015 that on</p>	<p>As sent to Respdt No.1.</p>

<p>Shri Thakare vide email dated 06/01/2015 has stated that there was vicious attack on him on duty and false FIR was lodged against him. He has further stated that he had exposed serious fraud amounting to Rs. 4.20 crores and prevented loss to the Govt. Exchequer. Consequently, the officer and staff held responsible by the enquiry report ordered by Supdt Engr. Public Works Circle, Thane were transferred to non-executive post by the competent authority.</p>	<p>evidence against Shri G.D. Thakare. Investigation Officer submitted a report to discharge Shri Thakare from the case u/s 169 of CRPC ACT. Six accused of attacking Shri Thakare were arrested and now case is under investigation. No further information regarding the case has been intimated to this office either from Jawhar Police Station or A.G(A&E)-II, Nagpur.</p>	<p>complaint of Shri G.D. Thakare case No. 16/2015 u/s 353 was registered at Jawhar Police Station. Status: Pending as no further information regarding the case has been intimated to this office either from Jawhar Police Station or AG(A&E)-II, Nagpur.</p>	
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Clearly, the Respondent No.2 was trying to make out a case against the applicant where there was none, at least in the present agitated context, and no reasons for this conduct can be derived from the respondent's files and notes.

10. Examination of the files of Respondent No.3 confirms that the Applicant did not report at

Nagpur citing his family constraints and later submitted a medical certificate issued by a private doctor supporting his request for commuted leave, which was declined on account of the procedure that needed to be followed. Further, after receiving instructions from the Respondent No.1 on 06.02.2020, the State Government was advised by Respondent No.3 on 18.02.2020 to make provisions in their State budget for payment of salary and allowances to the Applicant since DAOs can only be paid out of State Government budgets and there was no provision in the AG's office budget for this purpose.

11. With regard to the complaints, we observe that the alleged basis for action for the Additional Chief Secretary were:

- a) (i) Two photocopies of complaints dated 21.08.2019 addressed to the EE, PWD, Worli from a Maharashtra Contractor and Labour Association (MCLA), from Maharashtra Engineers Association (MEA), originals of which are not available or were ever available as verified from their files, but the copies of the letter marked in original to the ACS are available and these

original copies intended for him were received by him on 29.08.2019. These two photocopies of complaints were handed over by the SE (Shri N.M. Pawar) to the ACS on 22.08.2019 and again on 29.08.2019.

(ii) Original complaint dated 21.08.2019 from a journalist, Shri Kantikumar Jain addressed to the ACS directly and received by him on 23.08.2019.

(iii) Original complaint dated 23.08.2019 from All Maharashtra Thekedar Sena (AMTS) received by the ACS on 30.08.2019 after the decision to relieve the applicant was taken on 29.08.2019.

All the three complaints of MCLA, MEA, and AMTS annexed photocopies of three pages of signatures numbering 64, led by Shri Kakad, the main complainant at S.No.1. While the signature of MCLA is illegible, Shri Kakad has signed for MEA in one letter and an identical photocopy states that signatures of members are annexed but these are the same photocopies of 64 alleged signatories. No inquiry report is filed nor explanation sought.

- b) Complaint letter dated 29.08.2019 of Shri Kakad claiming that audit objections and corrections recorded on his running bill account for certain works (copies enclosed) had caused him a loss of Rs. 10 lakhs and on which, the ACS has also directed relief of the Applicant on the same day, 29.08.2019.
- c) Complaint letter dated 30.08.2019 of Shri Kakad that his elimination at the technical stage of scrutiny had caused a loss of 18% to the State. This letter is also subsequent to the decision of relief of the Applicant on 29.08.2019.

None of these complaints have been inquired on their preliminary aspects nor were they communicated to the Applicant and any explanation sought from him to determine future course of action. It appears that no dispute in relation to specific audit of tenders had also been referred by the concerned EEs or SE to the Inspecting Officer or recorded in the Audit register to be reconciled with the Applicant's superiors from the AG's office.

- d) The SE, Thane files a letter dated 01.10.2019 enclosing: an FIR registered on 09.01.2015

against the Applicant of molestation and a letter of 12.01.2015 from the Vice-Chairman, Zilla Parishad bringing this to notice and requesting Applicant's transfer, and three identical letters with different dates namely, 16.02.2014, 09.07.2014, and 28.03.2014 from local MLAs making allegations and a few other letters of 2014 expressing their unhappiness or making allegations. It is observed that this SE at Thane is also the same Shri N M Pawar, who is undoubtedly posted as SE at Mumbai and no explanation has been tendered for this strange occurrence since there is no evidence of him having made any inquiry or verification of the status of the police case (already settled in 2015) or of the fate of all these allegations or of the explanation of the Applicant that he may have tendered at the time including a letter of the then SE at Thane at the time of the incident, as noted in the files of the Respondent No.2. In any case, these old cases dug up by the State Government and reported only in October, 2019 have no bearing upon nor were they considered, as is clear from the files of Respondent No.4, for the orders of

August directing relief of the Applicant from his job. It is also seen that some of them are mentioned in the chronological list supplied as Annexure-IX with the letter dated 12.09.2019 of Respondent No.2 sent to Respondent No.3 without even a preliminary check and contrary to the contents of their own notes including tabular analysis of the said events.

12. No evidence is tendered by the Respondent Nos. 4 & 5 on whether, at any stage or occasion, the Respondents' subordinates specially brought any error or dispute over audit observations to the notice of the Inspecting Officer of the AG's office or directly to the AG or if the record of complaints along with results of preliminary inquiry had ever been brought to the notice of their superiors in a fair and just manner or had been communicated to the AG's office. Equally, there is no mention whatsoever of the existence or functioning of Inspecting Officers of the Respondents Nos. 2 & 3 in their pleadings nor in the notings of both or file of the latter. A careful perusal of the files, notings and pleadings does not reveal that the Applicant and, by extension, all similarly placed officers in the

State, were ever provided such a facility of an Inspecting Officer who could guide and encourage them, nip problems in the bud before they could escalate, and help preserve the auditors' independence, in addition to keeping a watch on the performance of the DAOs in the charge of the Inspecting Officer so as to ensure thoroughness of audit and to preserve its integrity. In plain terms, if a complaint arises, the Inspecting Officer would be the first to judge its credibility and resolve the issues raised. Even Respondent No.1's letters betray such supreme ignorance, a startling correspondence to the situation of their subordinate offices!

13. The status of complaints has been ascertained after preliminary inquiry by Respondent No.3 and has been advised to their learned counsel on 11.08.2020. It appears from the unsigned note deposited by learned counsel without the benefit of counter-signature, nor corrected despite repeated telephonic reminders, that this inquiry commenced from 28.09.2019, when no evidence was found and by further notice by phone and email to one complainant as recently as 16.06.2020 but there is nothing of substance that

emerges. The report remains inconclusive since one more incident is yet to be inquired and finalised. The report is replicated below:

Subject: Action taken on the complaints received against Shri Ganesh D. Thakare, Sr. DAO in this office.

Ref: Your email dated 11/08/2020.

Sir,

With reference to your email on above mentioned subject, the following is submitted.

Government of Maharashtra, Public Works Department, Mantralaya, Mumbai, vide their letter No. ladh.kZ 2019/File No.229/Desk-3 dated 9th September, 2019 forwarded following 6(six) complaints received against Shri Ganesh D. Thakare, Sr. DAO, to this office.

- 1) Shri Mukund R. Kakad, Contractor, dated 29/08/2019.
- 2) Mr. Kanti Kumar Jain, vide No.207/19, dated 28/08/2019.
- 3) Maharashtra Engineers Association, dated 21/08/2019.
- 4) MAHAPA Contractor and Labour Association, dated 21/08/2019.
- 5) Mr. Kanti Kumar Jain vide No. 183/19 dated 21/08/2019.
- 6) Akhil Maharashtra Thekedar Sena dated 23/08/2019.

Later on, this office received another complaint from Shri Mukund Kakad, vide his letter dated 15/10/2019, levelling some more allegations against Shri Thakare, Sr.DAO.

This office, being cadre control authority, initiated a Preliminary Enquiry in all 7 complaints in order to determine whether any case is made out, prima facie, to institute disciplinary proceedings against Shri Thakare. Out of these 7 complaints received against Shri Thakare, two complaints raised by Shri Mukund Kakad, has levelled specific allegations against Shri Thakare. These specific allegations were inquired into by this office. Explanation in the matter along with all relevant documents related to the allegations made by the complainant in his complaints dated 29/08/2019 and 15/10/2019 were

called for from Shri Mukund Kakad (complainant), Shri G.D. Thakare (alleged official) and the Executive Engineer, Central Mumbai Public Works Division, Mumbai (work place of Shri Thakare), vide this office letters dated 17/09/2019 and 13/12/2019. The documents received in response to this correspondence from all three parties were examined in this office in light of applicable rules and provisions guiding the duties of a Divisional Accounts Officer in a Divisional office. No irregularities as alleged in the complaint dated 29/08/2019 with reference to the works B1/CMD/16 & B1/CMD/17 of 2018-19 were noticed during the examination of relevant documents in this office. With regard to the complaint dated 15/10/2019, the relevant documents and comments of the Executive Engineer, Central Mumbai Public Works Division, Mumbai were also called for vide this office letter dated 13/12/2019 and examined in this office. No prima facie case was made out in these allegations also.

Apart from the above two specific complaints raised by Shri Mukund Kakad, remaining 5 complaints received against Shri Thakare were found to be non-specific in nature. No specific event/incident/work which can be investigated further by this office has been cited in these complaints. The undersigned had telephonically contacted some of the signatories of these complaints on 28/09/2019, requesting them to share specific details of incidents in support of the allegations levelled against Shri Thakare. Some of the signatories have denied having signed the complaints in question. However, no documentary evidence in support of their complaints have been forwarded by any of the signatories despite repeated telephonic follow-up. This office has also noted the fact that the list of signatories appended with complaints No.3, 4 and 6 is identical.

During the course of preliminary enquiry held so far, this office has found all complaints, except for one, at No.1 devoid of any substance. This office is still pursuing the allegation levelled by Shri Mukund Kakad, of having paid Rs.3,00,000/- to Shri Thakare on an earlier occasion. Vide email dated 16/06/2020, this office requested Shri Mukund Kakad (complainant) to confirm the facts and elaborate the details of the incident/work/event along with document if any, on this allegation. It was followed up by a reminder dated 28/07/2020 and telephonic contact with Shri Kakad. However, no response has been received from him till date.

This office is making all efforts to establish whether any prima facie case is being made out to initiate disciplinary proceedings against Shri Thakare. A final decision will be taken soon in the matter.

This is for your information and further necessary action please.

Yours faithfully,
Sd/-

Dy. Accountant General (A/cs & VLC)

14. The main issues involved in the present challenge as contained in the OA may be summarised as firstly, the competence and legal basis under which the authorities who ordered the relief of the Applicant from his post on 30.08.2019 and consequent movement from Mumbai to Nagpur; secondly, the extenuating circumstances perceived based on prima facie validity of the grounds alleged against him even at a preliminary stage when complaints were received and the emergent nature of the actions that they suggested; and thirdly, the bona fides of the conduct of the Respondents namely, of the Additional Chief Secretary heading the PWD including his senior officers, and that of the senior officers of the Respondent Nos. 1, 2 & 3 in this matter, from receipt of complaints to the manner in which the Applicant's case was handled. Fourthly, as

incidental to the conduct of the Respondents in enabling disposal of this OA, certain costs were imposed and MAs have been filed by respondents seeking to be excused from the imposts.

15. Apart from the facts of the matter that is found in the pleadings of parties and from their files, as detailed above, the Applicant in his OA, filed on 16.09.2019 and heard on 19.09.2019, has argued that he had objected, even at the earliest stage, to the unilateral decision of the Respondent No.4 to direct his relief and choose his successor as Auditor since this was in violation of the prerogative of the Respondent No. 2 and 3 to do so. Further, that the relief and further directions were clearly of a punitive nature and unjust. He also refers to the order of Respondent No.2 directing him to report at Nagpur, as a surrender but was a transfer for all real purposes and which was done without giving him the benefit of hearing nor after giving him details of the complaints under consideration; and the problems of his family.

16. Respondents Nos. 4 & 5 have filed two affidavits in reply on 09.10.2019. The first deals with the OA and states that the SE had

communicated many complaints against the Applicant and after considering the seriousness of the complaints, permission had been granted by the Additional Chief Secretary to relieve the Applicant immediately. The second affidavit in reply affirms that while ordering the relief of the Applicant, they had also referred to certain complaints of MLAs in 2014 and an FIR in 2015 as also some associated complaints in the case although without the current status of all these complaints.

17. Respondent No.2 has filed an affidavit in reply on behalf of all Respondents 1, 2 & 3 and states that after the State Government suo motu relieved the Applicant on 30.08.2019, on the basis of complaints reported to them and upon receipt of a letter from the Under Secretary, PWD on 09.09.2019 not to post him in any of the PWD divisions, they faced an administrative exigency and therefore, directed him to report to the office of the Respondent No.3 at Nagpur, the cadre controlling authority, and await orders. However, they plead that the Applicant had approached Court without affording time to deal with his representations from 30.08.2019 onwards. They

submit that the Applicant had not disclosed to them the incidents that led to the suo motu action by the State Government and considering that this case had no precedent in the department, they acted to deal with the administrative exigency. They further submit that the Applicant has a duty to serve anywhere in Maharashtra and that there is no fixed tenure of three years as alleged by the Applicant. Further, that the Applicant could be transferred on account of administrative or functional exigencies. On the Applicant's attempts to represent and for which, the Applicant has urged that he was regularly seeking appointments from the AG-II to the Welfare Officer, they state that after filing his representation to Respondent No.2 on 30.08.2019, he came on 30.08.2019, 03.09.2019, and 12.09.2019 in person as Asst. Secretary General of DA Association along with two other office-bearers and then without exhausting remedies, filed this OA. They deny receipt of the applicant's letter dated 13.09.2019 protesting their 'surrender' order.

18. In his Rejoinder to replies of Respondents 1, 2, & 3, the Applicant contends that none of the allegations made were brought to his notice, that

the genuineness of some of the complaints is clearly in doubt and these were also not brought to his notice nor was any action ever initiated. No order had been passed on his complaint and since no orders had been passed or even preliminary inquiry undertaken, the action taken by Respondent No.2 was clearly unrelated to the complaints. Moreover, it was plain that the State Government had not forwarded the complaints to Respondents No. 2 & 3 at the time they passed the said order of transfer. He also refers to the proposed examination of the complaints, which undercuts the basis for the punitive action taken in transferring him to Nagpur.

19. In his Rejoinder to the first reply to OA filed by Respondents No. 4 & 5, the Applicant asserts that the respondents have selectively filed papers and have excluded submission of a letter of SE dated 22.08.2019 and states that none of the complaints have ever been brought to his notice. He also suggests that the signatures in the Annexure to complaints were probably obtained on blank paper and identical copies annexed to each alleged complaint, which suggests that none of them are genuine and cannot become the basis

for the punitive order passed by an incompetent authority. Regarding the second reply of Respondent Nos. 4 & 5, which had enclosed the old complaints and an old FIR, the Applicant points out that this submission was clearly an afterthought since the said allegations dated back to 2013-2014 and the Respondents had not come with clean hands since none of the allegations had ever been brought to his notice. Further, on the FIR at Palghar, he refers to the B-Summary closure report submitted in 2015, accepted by the JMFC on 21.11.2016 and reported to Respondents 1-3 by him in 2017 and again, now on 18.09.2019, along with his letter referred earlier.

20. Following directions of this Bench on 14.02.2020, the Respondents 1-3 filed their Transfer Policy Guidelines and other documents relating to original complaints received by them from the State Government, the Duties and work of the DAOs, and the source of salary of the DAOs. The Transfer Policy Guidelines create a Committee on transfers and postings headed by a three-member Committee in the competent office of Respondents and specifies at para 2 as below:

"2. Constitution of a Committee on transfers and postings:

a) A three member Committee on transfer and postings comprising the Group Officer in-charge of Works Accounts and two other IA&AS officers of the rank of Sr. Deputy Accountant General/Deputy Accountant General from the sister office(s) to be nominated by the concerned Pr. Accountant General/Accountant General shall be constituted in the month of March/April of each year. The said Committee shall function for the entire year ending March of the subsequent year.

b) The Committee shall meet at regular intervals, or as and when required by the Pr. Accountant General/Accountant General."

21. The Guidelines also set out the considerations of the Committee with regard to transfers/postings and tenure at Division/Station, of which relevant paras are extracted below:

"3. Functions of the Committee:

Committee shall consider:

- a) All cases of annual transfers/postings;
- b) All other transfers affected during the year; and
- c) All cases of additional charge/link charge(s)"

4. Parameters to be considered by the Committee: (underlining by the author)

(i) The Committee shall consider the following broad parameters while recommending the cases for postings/transfers:

a) Transfer and posting should, as far as possible, be made only once in a year and annual transfers should be timed so that these do not disturb the academic session;

e) Option for posting in particular station(s) should be called for from the individuals and efforts should be made to accommodate the officers at the place of their choice as far as possible, subject to

availability of vacancy and administrative exigencies;

g) The adverse comments given by the Inspecting Officers auditing the accounts of the Division(s), adverse remarks made by the Executive Engineers on the performance of the Divisional Accounts Officers/Divisional Accountants on their performance as reflected in their Annual Performance Appraisal Reports and their performance in proper and timely submission of accounts should be kept in view while taking a decision on posting and transfer;

(ii) The Committee shall record in the proceedings the considerations that weighed with them in making each posting, entrustment of additional charge, etc. The proceedings should also include an assurance that the prescribed procedure has been adhered to scrupulously.

(iii) In case of any deviation in respect of (a) to (h) above, detailed reasons should be recorded by the Committee.

(iv) In case of any disagreement by the Pr. Accountant General/Accountant General with the recommendations of the Transfer Committee, the concerned Pr. Accountant General/Accountant General shall give detailed reasons in writing for the disagreement and full justification for modification(s) to the recommendations made by the Committee.

5. Tenure of Posting:

(i) The tenure of posting shall normally be three years in a particular 'Division' and six years at a particular 'Station'. Incumbency period for the 12 years preceding the year in which the transfers are being made is to be taken into account for this purpose."

22. Perusal of the notes of the file of Respondent No.2 shows a note was put up on this matter on 11.09.2019 and the decision on transfer was taken as set out in the note after which a transfer order dated 12.09.2019 was issued directing the Applicant to report at Nagpur:

"WM Cell
11.09.2019.
Submitted.

A letter No. संकीर्ण-2019/प्र क्र 229/सेवा-3 dated 09.09.2019 from Under Secretary, Govt. of Mah, Public Works Division, Mantralaya Mumbai addressed to O/o the A.G.(A&E)-II, Nagpur and copy endorsed to this office by e-mail may please be seen.

The Govt of Maharashtra, Public Works Department, has given consent for relieving of Shri G.D. Thakare, Sr. DAO from Central Mumbai Public Works Division, Worli, Mumbai with immediate effect from 30.08.2019 vide letter No. संकीर्ण-2019/प्र क्र 229/सेवा-3 dated 30.08.2019 on the grounds of numerous complaints received against him.

In this regard, the numbers of letters exchanged between various contractor association and Govt. of Mah is as follows:

Sr. No.	Letters from	Reference No.	Letter addressed to	In brief
1	Editor of Samaj Bhushan newspaper, Shri Krantikumar Jain	No. 183/19 dated 21.08.2019	Additional Chief Secretary, Public Works, Mantralaya, Mumbai.	He has stated that Shri Thakare has used arrogant language with contractor on the ground that nobody can take action against him and he is demanding money for passing the bills.
2.	Mahapa Contractor & Labour Association	No. Nil dated 21.08.2019.	Executive Engineer, Central Mumbai (PWD), Worli, Mumbai.	It is stated that Shri Thakare is demanding 10% for passing each bill. It is supported by signature of 64 contractors alongwith their Mobile Nos.
3.	Maharashtra Engineer Association	No. Nil dated 21.08.2019	Executive Engineer, Central Mumbai (PWD), Worli, Mumbai.	-do-
4.	Supdt. Engr.	No. 168 dated	Under Chief Secretary,	The Supdt. Engr has requested PWD,

	Public Works Circle, Mumbai	22.08.2019	Public Works Division, Mantralaya, Mumbai.	Mantralaya for immediate relieving of Shri G.D. Thakare due to numerous complaints received against him directly from Contractors.
5.	All Maharashtra Contractors Association	No.Nil dated 23.08.2019.	Under Chief Secretary, Public Works Division, Mantralaya, Mumbai.	It is stated that Shri Thakare does not pass any bill without taking 2% to 3% on the bill amount. Shri Thakare, Sr. DAO uses arrogant language with contractor. It is supported by signature of 62 contractors along with their mobile Nos.
6.	Shri Mukund R. Kakad, Contractor.	No. Nil dated 29.08.2019.	Under Chief Secretary, Public Works Division, Mantralaya, Mumbai.	He has stated that Shri Thakare demands money for passing the bills. If contractor refuses to give money he will face life threatening consequences from Shri G.D. Thakare. He has also submitted supporting documents viz. Running Account bill, memo of bills etc.
7.	Under Secretary, Public Works Division, Mantralaya, Mumbai.	No. 229/seva-3 dated 09.09.2019	Accountant General (A&P) -II Nagpur	The Govt. of Mah had given approval for relieving of Shri G.D. Thakare, Sr. DAO on request of Supdt. Engr, PWC, Mumbai due to numerous complaints received against him. It is further requested that Shri Thakare, Sr.DAO should not be given posting in any Division.

This office had issued a letter to Mantralaya vide letter NO. WM Cell/221 dated 09.09.2019 to forward all the relevant papers leading to the immediate relieving of Shri G.D. Thakare, Sr. DAO alongwith copy to O/o the A.G.(A&E)-II, Nagpur.

In response O/o the A.G.(A&E)-II, Nagpur vide Letter No. WM-I/GDT/Comp/1246 dated 11.09.2019 stated this office to take suitable action regarding Shri G.D. Thakare. Sr. DAO's posting as there is no complaint or any proposal for initiating disciplinary enquiry pending against Shri G.D. Thakare, Sr. DAO and requested to forward complaints if any received.

The history of Shri G.D. Thakare, Sr. DAO shows that there are previous complaints/charges of serious nature against Shri G.D. Thakare, Sr. DAO which are still pending and the status of the complaints is not received in this office.

Chronology of the complaints in respect of Shri G.D. Thakare, Sr. DAO from the year 2001 to 2015.

Sr .N o.	Brief of complaint with ref. No.	Page No.	Action taken	Page No.
1	Complaint received from Raigad District Contractor Association vide Letter dated 17.02.2001. A complainant (Contractor Asson.) had lodged complaint against Shri G.D. Thakare, Divisional Accountant in Public Works Division, Alibag stating that he is arrogant, insolent and corrupt and was demanding money not only for himself but also for his superiors as nobody can dislodge him from the post.	187/C (Vol.I)	Facts received from Ex.Enger against Shri G.D. Thakare has been forwarded to A.G., Nagpur vide this office letter No. Admn(Misc)/Works/GDT/31 dated 27.04.2001 for necessary action at their end. Further action taken by A.G. Nagpur not received in this office.	195/c (Vol.I)
2.	Supdt Engineer, Thane PW Circle, Thane vide letter dated 22.01.2015 has requested for transfer of Shri	420/c (Vol.I II)	The matter was pursued with Chief Engineer, Mumbai Public Works region, Mumbai and O/o the A.G. Nagpur vide this office D.O. No. WM	

G.D. Thakare, DAO-I.		Cell/GDT/04 dated 06.04.2015 for investigation.	
Supdt Enger has stated vide letter dated 22.01.2015 requested the transfer of Shri Thakare and also stated that Ex. Enger, PWD. Jawhar has reported that they have received the complaint with FIR against Shri Thakare, Sr. DAO from Jawhar police station vide their letter dated 09.01.2015 which is lodged by Smt. Kusum Namdeo Gavit a local lady regarding misbehaviour with her. Accordingly, the Police Department has arrested Shri Thakare under Indian Penal Code, Article 04/2015 Section 354(A) (1) and filed the FIR.	416/c (Vol.I II)	This office has called for the investigation report from Superintendent of Police, Palghar vide this office D.O.letter No. WM Cell/GDT/150 dated 29.06.2015 as no report has been received on the action taken on the said FIR by the authorities even after a period of 6 months.	
In this regard Shri Thakare vide email dated 06/01/2015 has stated that there was vicious attack on him on duty and false FIR was lodged against him. He has further stated that he had exposed serious fraud amounting to Rs. 4.20 crores and prevented loss to the Govt. Exchequer. Consequently, the officer and staff held responsible by the enquiry report	420/c (Vol.I II)	Supdt of Police, Palghar has informed vide his letter dated 24.08.2015 that on complaint of Shri G.D. Thakare case No. 16/2015 u/s 353 was registered at Jawhar Police Station. During the course of investigation, CCTV footage were seized from the spot and there is no evidence against Shri G.D. Thakare. Investigation Officer submitted a report to discharge Shri Thakare from the case u/s 169 of CRPC ACT. Six accused of attacking Shri Thakare were arrested and now case is under investigation. No further information regarding the case has been intimated to this office either from Jawhar Police Station or A.G(A&E)-II, Nagpur.	90/c (Vol.IV)
	446/c (Vol.I II)		

ordered by Supdt Engr. Public Works Circle, Thane were transferred to non-executive post by the competent authority.			
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It is stated that the present position is as follows:

- 1) Shri G.D. Thakare, Sr.DAO has been relieved by Govt. of Mah from Central Mumbai Public Works Division, Worli, Mumbai vide letter No. संकीर्ण-2019/प्र क्र 229/सेवा-3 dated 30.08.2019.
- 2) Due to his relieving the said division is now vacant.
- 3) As per standing orders Shri Sapan Kumar, Sr. DAO is informed to look after the charge of Central Mumbai Public Works Division, Worli, Mumbai as additional till further orders.
- 4) The charges against him are serious in nature and violation of Rule 3(1)(I to IX) under CCS Conduct Rules.
- 5) All disciplinary cases are handled by O/o AG(A&E)-II, Nagpur, being Cadre Controlling Authority.
- 6) Shri G.D. Thakare, Sr. DAO has given his explanation vide letter dtd. __08.2019 in the matter.

In view of the serious charged and perusal of old complaints and as the Government of Maharashtra has expressed its inability to continue Shri G.D. Thakare, Sr. DAO in Mumbai Region, it is proposed that this office is constrained to surrender Shri G.D. Thakare, Sr. DAO alongwith his explanation letter dated 30.08.2019 as preliminary fact finding by this office to A.G.(A&E)-II, Nagpur for further necessary action.

DFA to A.G.(A&E)-II, Nagpur and relieving order of Shri G.D. Thakare, Sr. DAO is placed alongside.

Submitted to Accountant General for approval and orders pls.

A.A.O./WM Cell : Sd/-
W.O.I/c WM Cell : Sd/-
Sr.DAG/ADmn : Sd/-
Accountant General : Sd/-"

the facts of the matter in his arguments and emphasised that the orders of relief by Respondents 4 & 5 and the order of transfer by Respondent No.2 were tantamount to punitive transfers and could not be held to be simplicitor orders. There were no pending departmental proceedings against him and his record was clean with no complaints brought to his notice previously or even now. He discussed the inconsistencies in the reply of respondents and with regard to the explanation offered by Respondent No.2 at para 16 of their reply for the orders of Respondents 4 & 5, he argued that if, as claimed, the unilateral relieving order was passed by the State Government and the Respondent No.2 was faced with an administrative exigency, there was no mention of such a circumstance and accompanying problems, if any, in the orders issued by them. He argued that the respondent No.2 and others cannot, now offer supplementary reasons in their replies. He referred to Annexure R-5, a letter from Respondent No.2 to Respondent No. 3 arguing that the State Government had found compelling reasons arising from the allegations and their office would be embarrassed and land in

a conflict with the State Government which had sent documentary evidence and had also asked that the applicant should not be posted in the PWD in Mumbai region. After referring to some old complaints and an FIR of 2015, he suggested inquiry on the matter and that he was constrained to post him outside Mumbai region. In his rejoinder, the applicant affirms that the complaints were never brought to his notice and perusal of the copies enclosed suggests that signatures were obtained in blank paper and copies made to serve as identical annexures for allegedly different complaints by different organisations. It was evident that merely based on these unverified complaints, he was relieved, which is a legally impermissible exercise of power. Not bringing the complaints to the notice of the applicant before taking punitive action violated the rules of natural justice. Moreover, the actions of Respondent No.4 acting through the Additional Chief Secretary (ACS), PWD had upset the checks and balances incorporated into the arrangements established to conduct activities for compiling accounts/audit. The powers of deployment were vested only in Respondent Nos.1, 2 & 3.

24. Learned Counsel for Respondent Nos. 4 & 5 affirmed facts and arguments presented in two replies dated 09.10.2019, one in reply to the OA and the second bringing forward some old complaints stated to be subsisting against the applicant. The first reply states that upon receipt of a letter from the SE, Worli, Mumbai, on 22.08.2019 that there were many serious complaints against the applicant and requesting permission to relieve him immediately and after considering the serious nature of the complaints against the applicant, he was directed to be relieved. Copies of the complaints that had been seriously considered by the Additional Chief Secretary and who had passed orders, are enclosed. The second reply states that old complaints of 2013 by MLAs and an FIR of 2015 are also relevant as a basis for relieving the applicant. Copies of these complaints are annexed to this reply.

25. Respondent Nos. 1, 2, & 3 have filed a common affidavit which, surprisingly reads as though it was only filed on behalf of Respondent No.2 and reflects none of the considerations and viewpoints of Respondents that we have found in their files. The reply refers to receipt of

numerous complaints against the applicant from Contractors and the Government instruction not to post him in any Division in Mumbai region. The reply argues that this was the administrative exigency that led to his transfer. Elaborating this causation at para 4 and 10.1, the Respondent No.2 states that the Applicant and office-bearers of the Association frequented the office questioning the basis of relief by the State Government from a post that he would normally have occupied for a three year tenure. Therefore, along with the unprecedented (para 16) act of unilateral relief by the State Government and the request not to post him in any Division in Mumbai and in the face of his continued representation, to wit, "in the event of such administrative exigencies," (para 10.1), he was transferred to Nagpur. In contrast to this argument, at para 18.1, Respondents argue that the contention that there is a three year tenure, is wrong and there is no such thing as a fixed tenure with the applicant being liable for transfer at any time within the State. The Respondents have also argued that the applicant had not exhausted all the remedies available and after filing a representation on

30.08.2019 and allegedly on 12.09.2019, the applicant had rushed to the Tribunal and had also not obeyed the transfer orders. In oral arguments, learned counsel for respondents elaborated on the numerous complaints received against the applicant.

26. Learned counsel for Respondent Nos. 4 & 5 referred to the directions of the Additional Chief Secretary and the complaints filed and argued that they had no alternative but to relieve him.

27. Learned Counsel for Respondent Nos.1-3 filed a reply to the Rejoinder dated 21.11.2019 of applicant opposing the claim of the applicant that the complaints against him were not known to him, which was a breach of the rules of natural justice. In his letter dated 30.08.2019, the applicant had enclosed three letters of Respondent Nos. 4 & 5 dated 30.08.2019 and in his representation of 18.09.2019, he had stated that Shri Kakad, a contractor-complainant was chiefly responsible for the complaints and discussed illegalities in one of his tenders. Therefore, it is claimed that the applicant was well aware of the complaints. On the previous complaints to which the applicant had questioned the nexus to

the present action, Respondent Nos. 1-3 claim that these are pending with Respondent No.3 and are of a similar nature, which, in their view, suggests that nexus exists.

28. On the instructions of the Bench given on 14.02.2020 to produce the original complaints against the applicant, the duties of the DAO, transfer policy guidelines, and the source of salary etc of the DAO, no replies or information was filed by 03.03.2020 to which date it was posted or even by 13.03.2020 and only after exception was taken by the Bench on 29.07.2020, were the details provided although all parties had been heard on 14.02.2020. These were finally produced under an affidavit on 10.08.2020. Learned counsel for Respondent No.3 has filed an MA No. 100/2020 and an Additional Affidavit of the same date arguing that they had been making efforts to comply with the directions of the Bench to produce all the above documents and that they were lying with their counsel, who had left in March for his native place. They state that they had absented themselves only on 13.03.2020 and 29.07.2020 when the matters were heard on this point and request that the penalty of Rs. 10,000/- on Respondent

No.3 may be withdrawn. A further Affidavit has also been filed by the learned counsel on his own behalf protesting against the aspersions cast on him for his absence in case hearings and for not cooperating with the court when the applicant was suffering by not getting his salary for nearly one year. In this regard, we have carefully traversed the notes recorded during the hearing and our recollection on the manner in which respondents were frustrating the attempt by this Tribunal to render justice in a timely manner. We note that arguments were essentially completed on 14.02.2020 and what remained were documents in the possession of the Respondents, which were not forthcoming on request. The respondents and their counsel have evidently not understood the grave legal implications of this case in its context and as precedent and they were expected to extend all support as officers of the court. It is also noticed that the notes of Respondent No.2 reveal the knowledge that the FIR filed against the applicant in Thane was closed and his counter-complaints were under investigation. However, in final affidavit and corresponding notes in the files, this observation is missing. Learned

counsel for respondents is an officer of the Court and should be alert to filing of false affidavits. Therefore, while no aspersions have been cast, he could still have been more careful and helpful given that he may have several years more to serve before this Tribunal. The penalties and observations, therefore, do not seem to be excessive in this context. Since payment of penalty is delayed, an additional ten per cent of the amount shall now be paid to the applicant, if not already completed, within two weeks and if further delayed, along with 18 per cent p.a. interest on the amount.

29. Following this final hearing, the main files of the Respondents dealing with the matter and the Applicant have been deposited in Court for perusal under cover of affidavits, duly signed. A status report dated 11.08.2020 has also been submitted on the inquiry of the Respondent No.3 on the old and new complaints against the Applicant. However, this report, addressed to the learned counsel, is unsigned and not attested on each page and it was the duty of counsel to ensure its authenticity before filing and countersign accordingly.

30. We have carefully perused the pleadings and documents filed by parties and heard both the learned counsel for applicant and the learned counsels for Respondents of the State Government and of the office of C&AG and considered their actions and behaviour in the context of the institutions in question and applicable laws and for their fides.

31. The Hon'ble Apex Court analysed the role of the C&AG of India in ***Association of Unified Tele Service Providers & Ors Vs. Union of India in CA No. 4591 of 2014 & Ors. decided on 17.04.2014, also (2014) 6 SCC 110,*** and noted that the institution of the C&AG is meant to ensure financial accountability of the Governments of the Union and the States and was part of the basic structure of the Constitution, while deciding the issues relevant to that case and this assessment of Article 149 of the Constitution read with the roles and responsibilities of the C&AG specified in the Act of 1971, in serving the requirements of the sovereign, the people of India, is fundamental to the decision against petitioners in that case. The relevant paragraphs at Para 33-37 of the judgement, read as below:

"33. We may first examine the powers of the CAG under our constitutional scheme. Article 148 of the Constitution states that there shall be a Comptroller and Auditor General, who shall be appointed by the President by warrant under his hand and shall only be removed in like manner and on like grounds as of Judge of the Supreme Court of India. The CAG is, therefore, an important functionary under the Constitution and, it is often said, he is the guardian of the purse and that he should see that not farthing of it is spent without the authority of the Parliament. Article 149 deals with the duties and powers of the CAG which reads as under:

149. Duties and powers of the Comptroller and Auditor General. The Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

34. Article 149 does confer the power on the CAG to discharge duties and powers in relation to the accounts of the Union and the States or any other authority or body, as may be prescribed under the law made by the Parliament. CAG, therefore, is exercising constitutional powers and duties in relation to the accounts, while the High Court under Article 226 of the Constitution, so also the Supreme Court under Article 32 of the Constitution, is exercising judicial powers. Duties and powers conferred by the Constitution on the CAG under Article 149 cannot be taken away by the Parliament, being the basic structure of our Constitution, like Parliamentary democracy, independence of judiciary, rule of law, judicial review,

unity and integrity of the country, secular and federal character of the Constitution, and so on.

35. The scope of Article 148 vis-à-vis the powers of the CAG came up for consideration before this Court in *S. Subramaniam Balaji v. State of Tamil Nadu and others* (2013) 9 SCC 659 and this Court held that the CAG is the constitutional functionary appointed under Article 148 of the Constitution and its main role is to audit the income and expenditure of the Government, government bodies and State run corporations and the extent of its duties is listed in the Comptroller and Auditor General (Duties, Powers etc.) Act, 1971. It is stated that functioning of the Government is controlled by the government, laws of the land, legislature and the CAG. CAG has the power to examine the propriety, legality and validity of all expenses incurred by the government and the office of the CAG exercises effective control over the government accounts and expenditure incurred on the schemes only after implementation of the scheme, as a result, the duties of the CAG will arise only after the expenditure has been incurred.

36. In *Arvind Gupta v. Union of India and others* (2013) 1 SCC 393 this Court, while examining the scope of Articles 149, 150 and 151 of the Constitution, vis-à-vis the reports of the CAG, noticed and pointed out that the CAGs functions are carried out in the economy's efficiency and effectiveness with which the government has used its resources and it was pointed out that performance/audit reports prepared under the regulations have to be viewed accordingly. In *Arun Kumar Agrawal V. Union of India and others* (2013) 7 SCC 1 this Court while interpreting Section 16 of 1971 Act held that the CAG has to satisfy himself that the rules and procedures, designed to secure an effective check on the assessment, collection and proper allocation of revenue are being duly observed and CAG has to examine the decisions which have financial implications, including the propriety of decision making. This Court also noticed that the report of the CAG is required to

be submitted to the President, who shall cause them to be laid before each House of Parliament, as provided under Article 151(1) of the Constitution of India. By placing the reports of the CAG in the Parliament, CAG regulates the accountability of the Executive to the Parliament in the field of financial administration, thereby upholding the parliamentary democracy.

37. We are of the considered view that when the executive deals with the natural resources, like spectrum, which belongs to the people of this country, Parliament should know how the nations wealth has been dealt with by the executive and even by the UAS Licence holders and the quantum of the Revenue generated out of the use of the spectrum and whether the same has been properly assessed, collected and accounted for by the Union and the UAS Licence holders. When nations wealth, like spectrum, is being dealt with either by the Union, State or its instrumentalities or even the private parties, like service providers, they are accountable to the people and to the Parliament. Parliamentary democracy also envisages, inter alia, the accountability of the Council of Ministers to the Legislature. In this connection reference may be made to the Judgment of this Court in S.R. Chaudhuri (supra) and Kihoto Hollohan (supra).“ ((2001) 7 SCC 126 & (1992) Suppl.2 SCC 651 respectively).

32. By assigning the C&AG and his lieutenants, the Accountants General in States, this independent role directly reporting to Parliament and the State Legislatures, the provisions incorporate both the need for an auditor to discharge his duties in a fearless, independent, and forthright manner to conserve public revenues but also the principle that the auditor is

independently appointed by persons elected by the sovereign and is not available to be chosen by the auditee. Therefore, when the C&AG carries out his duties through the Accountants General and his staff, the DAO and Inspecting Officers, any interference to their work by preventing them from discharging their task, preferring some of them for posting in specific places or for specific roles, compels examination of such action by reference back to the Constitutional provisions and the role of the C&AG. A simplistic comparison is to the role of auditors in public companies where the auditor is required to function independently and be absolutely free of any suggestion of conflict of interest on the part of the auditor. Any deviation from such practice would be a prescription for fraud and swindling for which the Satyam case was an outstanding example in our country. Simply put, although paid by the entity being audited, the auditor is not the servant of that entity and its functionaries.

33. In the present case, as the Respondent No.3 pointed out to Respondent Nos.4 & 5 in his letter of 18.09.2019, that even the Maharashtra Public Works Accounts Code. 1967 had been violated

by the orders of Respondent No.4 through the ACS peremptorily relieving the applicant. It cannot be argued that such a senior officer like the ACS, with perhaps more than 30 years of public service under his hat, was not aware of the relevant provisions and particularly after it was brought to his specific attention by Respondent No.3. While we will advert to his claim of extenuating circumstance in the form of the allegation by various parties against the applicant, the fact remains that the orders of the ACS were not only an unlawful exercise of assumed powers but also in flagrant violation of the basic structure of the Constitution and further, a deliberate destruction of a system that had been established by law and had operated from even prior to the adoption of this Constitution as also observed by the Hon'ble Apex Court in the judgement paras extracted above. Again, the action is the very opposite of the oath or solemn affirmation taken by the then ACS when he entered public service as required for all officers of the Superior Civil Service, the IAS. In these circumstances, we hold that the order of Respondent Nos.4 & 5 unilaterally directing relief

of the applicant was a totally unlawful act and needs to be quashed and is accordingly quashed.

34. It is also of relevance to note from the orders of the ACS on behalf of Respondent No.4 that the audit work hitherto carried out by the applicant was directed to be assigned to a Sr. DAO posted at a different office, Andheri. No explanation is tendered in pleadings nor is available in the files of Respondent No.4 for this curious choice. While it is trite logic and custom that the auditee cannot choose his auditor, the choice should have beckoned close attention of Respondent Nos. 1-3 and especially Respondent No.2 on whether this auditor had ceased to be a watchdog for the sovereign and was only a pet poodle to be summoned at will. That this person was not appointed in this manner is perhaps a saving grace in this miserable sequence of events relating to an important spending department of the State Government. We are reminded of this quotation of Dr. B.R. Ambedkar:

"I feel that the Constitution is workable; it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution the reason will not be that we had a bad Constitution. What we will have to say that Man was vile."

35. Perusal of the complaint that came before the ACS who headed the Public Works Department of Respondent No.4 and had received his emergent attention shows the dominant ubiquity of Shri Kakad, who had personally deposited the complaints before the ACS. Only one complaint was mailed separately by an alleged journalist but which offered vague complaints of arrogance, generalized allegations of bribery that should have alerted even a junior officer of the Superior Civil Service namely, the IAS. The annexures to the complaints from alleged Associations sent or handed over by the SE, Shri N.M.Pawar, and Shri Kakad to the ACS were identical photocopies of an original which is not available with any of the respondents including the ACS as confirmed from the State Government files. The contractor, Shri Kakad, had also enclosed copies of his running account bills which had been audited and claims curbed and a tender decision where he had been rejected at the stage of technical appraisal and duly minuted. These letters are indeed factual allegations but the rules governing the DAO and the Public Works Code themselves provide for reference to the Inspecting Offices and mention in

the specified register for disagreements to which additional recourse was available by way of a special letter to the Accountant General requesting review of the work of the DAO. These constitute the inbuilt checks and balances referred by the learned counsel for the applicant during his arguments. The ACS was also evidently aware that the DAO did not work under him except for drawing his pay and allowances from the State Government and that the deployment of persons to this post was not within his powers. Despite all these provisions, the ACS chose to peremptorily relieve the applicant. As we have discussed, the post was not created by the department nor could it be withdrawn and the duty/power of placing or removing a person from that post lay solely with the respondent No.2 to whose region, the applicant had been allotted by the respondent No.3.

36. It was for understanding his approach, his actions, and the compulsions under which he was operating, that the ACS was directed to appear before the Bench on 13.08.2020 during the hearing held on 10.8.2020 when nobody represented the Respondents 4&% but he chose not to be present without any reason or apology and instead, chose

to be represented by the Deputy Secretary, Shri Khedkar.

37. Respondent Nos. 4 & 5 had filed two replies to the OA. The second enclosed petitions subsequently received by the ACS relating to the offices where the applicant had worked between the years 2001 to 2015. None of these were before the ACS when he took the impugned decision to unilaterally relieve the applicant and clearly constitute afterthoughts. As observed earlier, these were submitted to the ACS by the same Shri N.M. Pawar who is SE covering Worli but now signs as SE, Thane. None of the complaints have been examined by the SE before submission. The letters of the MLAs are identically worded and perhaps suggest an orchestrated campaign against the applicant. The FIR had been closed several years previously and the Applicant's counter-complaint was being pursued, indefinitely, it seems, by the Police. In one aspect, even the then SE appears to have taken action against an assailant of the applicant. The absence of such information and the behaviour of the SE should have alerted the ACS to possible manipulation to compel him to act unlawfully. The rules of natural justice also

require that the affected party should be given an opportunity to rebut the allegations. It appears from the pleadings and file of respondent No. 4 that such a need never arose in the mind of the departmental head, the ACS, before rushing to take the decision to relieve the applicant-auditor. It is quite well-known and widely reported that departments that have heavy expenditure budgets on public works and the like are constrained by the activities of a mafia led by contractors and other elements, as also bureaucrats. Therefore, elementary caution dictated that the ACS makes multiple checks before arriving at any conclusions. It is, therefore, in this set of events, context, and possible alternatives for decision making, that we find that there were absolutely no extenuating circumstances that could have compelled the ACS to decide the way that he did by summarily relieving the applicant from his post in an unlawful manner, contrary to his oath to abide by the Constitution.

38. We now come to the role of the Respondent No.2. This authority had exercised vested powers to deploy the applicant to various divisions and in the previous year, to the present division at

Worli. It is an admitted fact that Respondent No.2, the A.G.(A&E)-I, Mumbai, did not allow the applicant the opportunity to be heard on the protest given by this applicant on the behaviour of Respondent Nos. 4 & 5. Furthermore, his Sr. DAG (Admin) also admits to have refused to meet him nor did even his most junior subordinates (Welfare Manager) and this imputation by the applicant has not been denied. Instead, in reply, they argue that he came once by himself and later as a Union Official. There are no notes of any such meeting and the bland denial coupled with doubts on how he made such a distinction when he could have heard the applicant while asking the Union officials to wait, suggest that he and his office had already taken an adverse personal opinion on the applicant's case. The notes of the Respondent No.2 leading to the decision to surrender the applicant to Nagpur office, reveal practically no perusal, let alone scrutiny, of the complaints against the applicant. The act of surrender as described by Respondent No.2, is itself clearly a euphemism for transfer and perhaps was intended as a defense against its being punitive in nature. It is also significant to note that the relevant information

on closure of FIR at Thane was struck out from the report although it finds place in the notes put up by the office. An added fact is that the applicant's letter of 18.09.2019 received on that day or the next but was formally put up to the A.G., only a month later. It is, therefore, in this context of correspondence and circumstance, that we find the denial of receipt of the applicant's letter dated 13.09.2019 as lacking credibility. Evidently, it would seem, respondent No.2 was rushing to help the State Government and comply with their wishes throwing his constitutional role and provisions to the winds and in absolute ignorance of their duties on audit. In particular, and in addition to the denial of opportunity to be heard to the applicant, the absence of any consultation or referral or even mention of the Inspecting Officer in the notes and letters of the respondent No.2, suggests a frivolous and irresponsible approach to this problem.

39. As regards the exercise of power to surrender the applicant to the Nagpur office, it has been pointed out by respondent No.3 to respondent No.2 that the latter could only deploy

the staff within the region and not transfer or surrender, to Nagpur; and that there was no concept of headquarters for the DAO. The transfer guidelines also set out the norm that transfers cannot be made in mid-academic year; that normal tenure in a Division was three years and seven years at a Station; and such transfer had to be considered by a Transfer Committee. The respondent No.2 has contested the tenure despite provisions in the guidelines. Further, the pleadings and file notings of respondent No.2 reveal no consideration by the requisite Committee. From the tenor of the correspondence between Respondent No. 2 (A.G. (A&E)-I, Mumbai) and Respondent No.3 (A.G.(A&E)-II, Nagpur), it could be inferred that the former was the senior of the latter and had decided to act beyond his limited role and undermine the responsibilities of the latter, Respondent No.3. We find the behaviour and advice tendered by Respondent No.1 very peculiar, strangely incompetent and lacking any understanding of the need for their leadership in the matter and also their constitutional role. In any event, the letter dt. 12.09.2019 by which the applicant was directed to report at Nagpur office was clearly an

illegal act of respondent No.2 and on this aspect, it deserves to be quashed and the so-called surrender/transfer order, is accordingly quashed.

40. Although respondent No.3 opposed the action of the State Government in his letter dated 18.09.2019 and advised them accordingly, he only continued to remind them itinerantly in an ineffective manner. Notably, he had, by his non-interference, allowed the additional charge arrangement by Shri Sopan Kumar, Sr. DAO of the applicant's work to continue. It was well within the powers of Respondent No.3 to cancel this arrangement permitted by Respondent No.2 who had acted in compliance with the letter of the State Government. These actions of Respondent Nos.2 & 3 seen with the advice of Respondent No.1 to show that they have responded to the State Government's attempt to disrupt their basic audit functions with pusillanimity. It would appear that they preferred to 'roll over and play dead' rather than to assert the independence and essential role of audit. In this case, moreover, assigning additional charge would essentially mean a dilution of audit supervision over the actions of Respondent Nos.4 & 5 which appears to have been

the precise source of this predicament and the pusillanimous behaviour of Respondent Nos.1 to 3 has possibly helped the criminal elements of the Department achieve their ends.

41. In the foregoing circumstances, as a correspondence to quashing of the orders of relief dt. 30.08.2019 by respondent Nos. 4 & 5 and the letter/direction surrendering the applicant to Nagpur by Respondent No.2, the applicant shall be allowed to rejoin at his original deployed location immediately, on full payment of all salary and allowances from date of relief to rejoining, within two weeks from date of receipt of a digitally signed copy of these orders, treating this period including the refused period of leave on medical certificate, as on duty for all purposes. His tenure of three years in the Division shall also be extended by this period when Respondent Nos. 4 & 5 acted in concert with Respondent No.2 and prevented him from discharging his duties.

42. Further, Respondent Nos. 4 & 5 shall compute his dues as ordered above and pay 12% interest on monthly rests from the dates on which such monthly salary and allowances became due to

be paid to the applicant up to the date of payment, within two weeks as specified above with balances kept pending beyond that date bearing interest at 18% p.a. until full payment.

43. Again, since this OA was itself about the effective use of public funds for public interest; the action of vested interests working against this principle; and the flagrant abuse of Constitutional provisions by respondent No.4 acting through the then ACS on the advice of the SE, the public should evidently not suffer the penalty for such actions of officials. Therefore, the entire amount of salary and allowances for the above period when the applicant was not allowed to function and interest thereof computed as above, shall be recovered entirely from the then ACS and the then SE, apportioning the latter to not less than 25%, as the State Government may decide, of the amount arrived in their computation.

44. The Respondents shall also bear the legal costs of the Applicant estimated as Rs. 50,000, of which Rs. 37,500 shall be borne by Respondent No.4 and paid to the applicant within two weeks positively in the first instance and to recover these costs from the then ACS and SE on the same

ratio (75:25), as the State Government may decide, along with appropriate interest. The balance, Rs. 12,500 shall be paid by Respondent No.1 to the Applicant within two weeks in the first instance, and recover this amount from the concerned official of Respondent No. 1 and the A.G.(A&E)-II, Nagpur who is Respondent No.3, each bearing share of Rs. 1250 and the remaining Rs. 10,000 shall be recovered from the officials of the Respondent No.2, specifically, the then A.G.(A&E)-II, Mumbai and the then Sr. DAG(Admin), AG(A&E)-II, Mumbai in equal shares.

45. The Respondent No.1 is also directed to consider initiating an inquiry into their extant audit practices including the existence or functioning of Inspecting Officers in the offices of the Accountants General in the State. In particular, considering the conduct of the officers of A.G.(A&E)-II, Mumbai, the Respondent No.1 may consider examining the need for taking disciplinary action against the two chief officials of the office and also examine whether their behaviour lends itself to conferring any serious duties and responsibilities to these two officers (A.G & Sr. DAG).

46. The conduct and flagrant abuse of power along with disregard of the oath to honour and abide by the Constitution by the then ACS is also referred for consideration to the Secretary, DoP&T to consider initiating disciplinary action and to examine the need for investigation by the CBI since this subject is part of the duties of the C&AG that the then Respondent No.4, the ACS, took upon himself to obstruct. His (the ACS) lack of elementary appreciation of evidence, immaturity in administration, disregard of rules of natural justice and the elementary principles of financial administration are also referred to the Chief Secretary of the State Government and the Lok Ayukta of the State for consideration of whether he can be considered suitable for any serious responsibilities of general and financial administration.

47. The OA is accordingly allowed with costs and directions as detailed above.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar) | |
Member (A)

Ram.

